

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011-288

Issue No: 6004

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 15, 2010

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

RECOMMENDED HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon petitioner' request for a hearing. After due notice, a hearing was held on November 15, 2010. Petitioners were not represented.

ISSUE

Did the Department properly deny petitioners application for an Adoption Support Subsidy?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) Petitioners adopted a child (Date of Birth [REDACTED]) on May 2, 2003.
- (2) The child entered foster care on [REDACTED]. The child was placed as a court ward and parental rights were terminated on October 9, 2001.
- (3) The child was placed in petitioners' home on [REDACTED].
- (4) On February 21, 2002, petitioners requested an Adoption Support Subsidy for the child.
- (5) On October 31, 2002, the Department denied the request.
- (6) The petitioners filed a petition for adoption on May 20, 2003.

- (7) Petitioners requested a hearing regarding the denial on May 20, 2003.
- (8) The Department had denied the request for an adoption subsidy because the petitioners did not meet the #4 criteria set forth in CFA 738 which states, "The prospective adoptive family requesting support subsidy for the child is the only placement in the best interests of the child as described in the child assessment; or for a child who does not have a best interests placement, a reasonable effort to locate a family for the child has failed to locate an appropriate family willing to adopt without support subsidy. See CFA 738, pg. 2-3 for details of these processes. ... The only placement in the best interests of the child requires the following: The adoption worker must determine that the planned placement is the only placement in the child's best interests and document it in the child's adoption assessment. In order for the child to be eligible for an adoption support subsidy, the planned adoption must meet one of the following categories: Adoption by the child's long-term (one year or more) foster parents...."
- (9) On August 27, 2009, a hearing was held and the Department agreed to review the circumstances surrounding the issue of eligibility for adoption subsidy and determine eligibility.
- (10) On September 28, 2009, an Administrative Law Judge issued a decision indicating the following: "the department open review the adoption subsidy application and make an eligibility decision. The department is to notify the petitioners in writing of the decision in accordance with this settlement agreement."
- (11) On January 8, 2010, the Department completed the review of the adoption subsidy application and concluded the child was not eligible for adoption subsidy. Essentially finding the Department's original decision to be correct.
- (12) On January 20, 2010, the Petitioner requested a hearing.

CONCLUSIONS OF LAW

The Adoption Subsidy program is established by MCL 400.115, *et seq.*, and is administered by the Department of Human Services (formerly known as the Family Independence Agency) pursuant to MCL 400.10, *et seq.* Department policies regarding adoption subsidy are found in the Services Manual (SM). The federal law upon which Michigan law is based is Title IV-E of the Social Security Act, Section 473(c).

The State of Michigan administers three adoption subsidy programs: Adoption Support Subsidy; Adoption Medical Subsidy and Nonrecurring Adoption Expenses Reimbursement. The purpose of support and medical subsidies is to remove financial barriers to the adoption of Michigan foster children with special needs, as defined by MCL 400.115f. The purpose of the nonrecurring adoption expense reimbursement program is to assist in paying the out-of-pocket expenses of adoption of special needs

children. Based on each individual child's situation and needs, one or more of the subsidy benefits may be available to support their adoption. Some children do not qualify for any subsidy program based on their individual circumstances. Subsidy is available without respect to the income of the adoptive parent(s). The adoption support subsidy is intended to assist with the payment of expenses of caring for and raising the child. It is not intended to meet all of the costs of raising the child; rather, it is a money grant program, which provides assistance to adoptive parents in certain defined and limited ways. Adoptive parents retain financial and decision-making responsibility and authority for their child. A support subsidy is a monthly payment to the parent or parents of an eligible adopted child. This payment provides assistance to the parent or parents of the adopted child and eligibility is determined before the petition for adoption is filed. The child placing agency, the Department of Human Services (DHS), or the Department of Community Health unit that has responsibility under Michigan's law for the care and supervision of the child is responsible for submitting the application for support subsidy. CFS Manual Item 100.

Under Program Administrative Manual Item 600, clients have the right to contest any agency decision affecting eligibility or benefit levels whenever they believe the decision is illegal. The agency provides an Administrative Hearing to review the decision and determine if it is appropriate. Agency policy includes procedures to meet the minimal requirements for a fair hearing. Efforts to clarify and resolve the client's concerns start when the agency receives a hearing request and continues through the day of the hearing.

The Department policy in effect for the period in question reads:

Applications for Adoption Support Subsidy are to be submitted by the licensed child placing agency that is responsible for the care and supervision of the child. Applications must be consistent with the adoption plan that has been made for the child and documented in the child assessment. The application forms are the FIA-1341 and the FIA-4081. In cases where the adoption agency does not believe the child meets Adoption Support Subsidy eligibility criteria, but the potential adoptive family is requesting Adoption Support Subsidy for the child, the agency should submit the application for the Adoption Support Subsidy to the Adoption Subsidy Program Office. The Adoption Subsidy Program Office will make all determinations of eligibility. CFA 750.

In the present case, the Department had agreed to review the application for adoption subsidy at a prior hearing. On January 8, 2010, the Department concluded, after completing this review, the petitioner was not eligible for adoption subsidy. The Claimant requested a hearing regarding this denial.

Relevant policy cited by the Department CFA 750, p. 1-2:

SUPPORT SUBSIDY PROGRAM ELIGIBILITY

Eligibility for the Adoption Support Subsidy program requires the following:

1. Determination of eligibility (Certification) for support subsidy by the Adoption Subsidy Program Office before the Petition for Adoption is filed with the court.
2. A written agreement between the parent(s) and the State Agency setting forth the amount of Adoption Support Subsidy to be paid, signed by both parties prior to the finalization of the adoption.

Independent Adoptions/Direct Placement Adoptions

Direct placement adoptions facilitated by attorneys, private adoptions, and adoptions directly between parties do not meet the Adoption Support Subsidy eligibility criteria and are ineligible for Adoption Support Subsidy. See CFA-731 for the definition of Direct Placement.

Certification Criteria For Initial Adoption

A child may be certified eligible for an Adoption Support Subsidy if all of the following are met at the time the request (FIA 1341) is received in the Adoption Subsidy Program Office:

1. The child has been in foster care (see Definitions, CFA 743) for at least four (4) months immediately prior to the certification request. Guardianship (see Definitions, CFA 743) is not considered foster care for purposes of Adoption Support Subsidy eligibility.
2. Certification is approved by the Adoption Subsidy Program Office before the child's eighteenth birthday.
3. Certification is approved by the Adoption Subsidy Program Office before the petition for adoption is filed.
4. A reasonable but unsuccessful effort was made to place the child with an appropriate adoptive family without providing an Adoption Support Subsidy or the prospective adoptive placement is the only placement in the best interest of the child and the adoptive parent or parents are requesting an Adoption Support Subsidy.

One of the following criteria must be met in order to meet the requirement of #4 above:

- The child is eligible for SSI and the adopting parent(s) have requested Adoption Support Subsidy by signing the FIA 4081 Adoption Support Subsidy Intent Statement.
- The child has a special need for medical, mental health, or rehabilitative care that equals or exceeds the foster care Level 2 Difficulty of Care and is supported by the Updated Service Plan attached to the certification request and the adopting parent(s) have requested Adoption Support Subsidy by signing the FIA 4081 Adoption Support Subsidy Intent Statement. The Adoption Subsidy Program Office will determine if the above documentation complies with FIA's DOC policy and is sufficient to meet certification criteria.
- The child is age 3 or more at the time the certification request is received in the Adoption Subsidy Program Office and the adopting parent(s) have requested Adoption Support Subsidy by signing the FIA 4081 Adoption Support Subsidy Intent Statement.
- The child is a member of a sibling group being adopted together and at least one sibling group member qualifies under one of the previous categories and the adopting parent(s) have requested Adoption Support Subsidy by signing the FIA 4081 Adoption Support Subsidy Intent Statement.
- The child is being adopted by a relative and the adopting parent(s) have requested Adoption Support Subsidy by signing the FIA 4081 Adoption Support Subsidy Intent Statement.
- The child is being adopted by a previously adopted sibling's adoptive family and the adopting parent(s) have requested Adoption Support Subsidy by signing the FIA 4081 Adoption Support Subsidy Intent Statement.
- The child has been in the foster care system for two years or more since termination of parental rights and efforts to locate an appropriate family to adopt the child without Adoption Support Subsidy have failed.
- For children whose parental rights were terminated prior to 8/1/02 only: The child is being adopted by the child's long-term (one year or more) foster parents

and the adopting parent(s) have requested Adoption Support Subsidy by signing the FIA 4081 Adoption Support Subsidy Intent Statement.

Relevant policy cited by the Department CFA 738, p. 1:

A child may be certified eligible for a support subsidy if all of the following are met:

- The child has been in foster care (see Definitions, CFA 737) for at least four (4) months immediately prior to the certification request. Guardianship is not considered foster care for purposes of adoption subsidy eligibility.
- Certification is approved by the Adoption Subsidy Program Office before the child's eighteenth birthday.
- Certification is approved before the petition for adoption is filed.
- The prospective adoptive family requesting support subsidy for the child is the only placement in the best interests of the child as described in the child assessment; or for a child who does not have a best interests placement, a reasonable effort to locate a family for the child has failed to locate an appropriate family willing to adopt without support subsidy. See CFA 738, pg. 2-3 for details of these processes.

Relevant policy cited by the Department CFA 738, p. 2-3:

The only placement in the best interests of the child requires the following:

1. The adoption worker must determine that the planned placement is the only placement in the child's best interests and document it in the child's adoption assessment. In order for the child to be eligible for an adoption support subsidy, the planned adoption must meet one of the following categories:
 - Adoption by the child's long-term (one year or more) foster parents
 - Placement with relatives
 - Placement with a previously adopted sibling

- Another compelling best interest reason as described in a Best Interests Memo, FIA 4811. The memo must include:
- a description of the child's relationship with the potential adoptive parent
- length of the relationship
- the ability of the adoptive parents to meet the child's special needs, and
- any other factors used in the determination of the best interests, i.e., age, number of prior placements, sibship, etc.,

AND

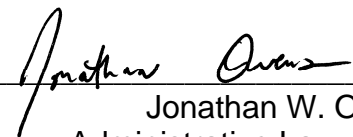
2. The Adoptive Parent's Request for Support Subsidy, Form FIA-4081 must be signed by the prospective adoptive parent(s).

The petitioner's assert their child should qualify for the adoption subsidy. Here, after reviewing the evidence submitted for consideration, this Administrative Law Judge finds the Department's determination to be correct. The child in question fails to meet the criteria cited in order to be considered eligible for adoption subsidy.

RECOMMENDED DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department was correct in denying petitioners' request for an adoption support subsidy.

It is RECOMMENDED that the Department's decision in this regard be and is, hereby, AFFIRMED.



Jonathan W. Owens
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 11/16/10

Date Mailed: 11/17/10

NOTICE: The law provides that within 30 days of receipt of the above Decision and Order the petitioner may appeal it to the circuit court for the county in which he/she lives. Administrative Hearings, on its own motion, or on request of a party within 30 days of the receipt of this Decision and Order, may order a rehearing. Administrative Hearings will not order a rehearing on the agency's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original hearing request.

JWO/dj

cc:

